

Hon. Franklin D. Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE CITY OF TACOMA, a municipal
corporation of the State of Washington,

Plaintiff,

vs.

CLARENDON AMERICA INSURANCE
COMPANY, a Delaware corporation; and
SPECIALTY SURPLUS INSURANCE
COMPANY, an Illinois corporation,

Defendants.

NO. CV07 – 5055 FDB

DEFENDANT SPECIALTY SURPLUS
INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT

COMES NOW defendant Specialty Surplus Insurance Company ("Specialty"), by and through its undersigned counsel, and now submits this Answer and Affirmative Defenses to plaintiff's Complaint.

ANSWER TO COMPLAINT

I. Jurisdiction

1.1 – 1.3 Defendant Specialty admits the allegations contained in paragraphs 1.1, 1.2 and 1.3.

{1016341.DOC}

DEFENDANT SPECIALTY SURPLUS INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE
DEFENSES
(W. D. Wash. Cause No. CV07-5055 FDB) - 1

LEE · SMART · COOK · MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1 **II. Venue**

2 2.1. Defendant Specialty denies the allegations contained in paragraph 2.1.

3 **III. Statement of Facts**

4 3.1 The document speaks for itself. To the extent an admission or denial is
5 required, defendant Specialty denies the allegations contained in paragraph 3.1.

6 3.2 Defendant Specialty has insufficient information to admit or deny the
7 allegations alleged in paragraph 3.2 and, to the extent an admission or denial is required,
8 denies the same.

9 3.3 Defendant Specialty states that the allegations contained in paragraph 3.3
10 comprise legal conclusions and not facts which must be admitted or denied; and, to the extent
11 an admission or denial is required, Specialty denies the same.

12 3.4 Defendant Specialty admits that to settle the *Brame* matter, it made payments
13 pursuant to its policy, but states that the allegations contained in paragraph 3.4 concerning the
14 legal effect of such payments is a legal conclusion and not a fact which must be admitted or
15 denied; and, to the extent an admission or denial is required, Specialty denies the same.

16 3.5 Defendant Specialty is paying 75% (seventy-five percent) of the plaintiff's
17 defense costs, fees and expenses demanded from Specialty by the plaintiff; and accordingly
18 denies that it has "failed" to pay plaintiff for "reasonable" defense costs; and, defendant
19 Specialty denies the remaining allegations contained in paragraph 3.5.

20 3.6 Paragraph 3.6 is not directed to defendant Specialty. To the extent an
21 admission or denial is required, defendant Specialty responds that it has insufficient
22 knowledge to confirm or deny the allegations in the paragraph and therefore denies the same.

23
24
25 {1016341.DOC}

DEFENDANT SPECIALTY SURPLUS INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE
DEFENSES
(W. D. Wash. Cause No. CV07-5055 FDB) - 2

LEE · SMART · COOK · MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1 3.7 Defendant Specialty states that the allegations contained in paragraph 3.7
2 comprise legal conclusions and not facts which must be admitted or denied; and, to the extent
3 an admission or denial is required, Specialty denies the same.

4 **IV. First Cause of Action - Declaratory Relief**

5 4.1 As and for its Answer to paragraph 4.1 of the Complaint, Specialty realleges
6 and incorporates its answers to the preceding paragraphs 1.1 to 3.7 as though fully set forth
7 herein.

8 4.2 Defendant Specialty states that the allegations contained in paragraph 4.2
9 comprise legal conclusions and not facts which must be admitted or denied; and, to the extent
10 an admission or denial is required, Specialty denies the same.

11 4.3 Paragraph 4.3 is not directed to defendant Specialty. To the extent an
12 admission or denial is required, defendant Specialty responds that it has insufficient
13 knowledge to confirm or deny the allegations contained in paragraph 4.3, and therefore denies
14 the same.

15 4.4 Paragraph 4.4 is not directed to defendant Specialty. To the extent an
16 admission or denial is required, defendant Specialty responds that it has insufficient
17 knowledge to confirm or deny the allegations contained in paragraph 4.4, and therefore denies
18 the same.

19 4.5 Defendant Specialty denies the allegations contained in paragraph 4.5.

20 **V. Second Cause of Action - Breach of Contract**

21 5.5 As and for its Answer to paragraph 5.5 of the Complaint, Specialty realleges
22 and incorporates its answers to the preceding paragraphs 1.1 to 3.7 as though fully set forth
23 herein.

24 5.6 Defendant Specialty denies the allegations contained in paragraph 5.6.

25 {1016341.DOC}

DEFENDANT SPECIALTY SURPLUS INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE
DEFENSES
(W. D. Wash. Cause No. CV07-5055 FDB) - 3

LEE · SMART · COOK · MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1 5.7 Defendant Specialty is paying 75% (seventy-five percent) of the fees, costs,
2 and expenses demanded by the City in the *Brame* matter; Specialty denies the remaining
3 allegations contained in paragraph 5.7 as an issue in dispute is whether the remaining the fees,
4 costs, and expenses demanded by the City are reasonable.

5 5.8 Defendant Specialty denies the allegations contained in paragraph 5.8.

6 5.9 Paragraph 5.9 is not directed to defendant Specialty. To the extent an
7 admission or denial is required, Specialty responds that it has insufficient knowledge to
8 confirm or deny the allegations in the paragraph, and therefore denies the same.

9 5.10 Paragraph 5.10 is not directed to defendant Specialty. To the extent an
10 admission or denial is required, Specialty responds that it has insufficient knowledge to
11 confirm or deny the allegations in the paragraph, and therefore denies the same.

12 5.11 Paragraph 5.11 is not directed to defendant Specialty. To the extent an
13 admission or denial is required, Specialty responds that it has insufficient knowledge to
14 confirm or deny the allegations in the paragraph, and therefore denies the same.

15 5.12 Paragraph 5.12 is not directed to defendant Specialty. To the extent an
16 admission or denial is required, Specialty responds that it has insufficient knowledge to
17 confirm or deny the allegations in the paragraph, and therefore denies the same.

18 To the extent that Specialty has not expressly responded to any allegations in the
19 Complaint, all such allegations are denied.

20 **DEFENSES AND AFFIRMATIVE DEFENSES**

21 Defendant Specialty asserts the following defenses and affirmative defenses to the
22 plaintiff's Complaint:

- 23 1. The Complaint fails to state a claim upon which relief can be based.

24
25 {1016341.DOC}

DEFENDANT SPECIALTY SURPLUS INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE
DEFENSES
(W. D. Wash. Cause No. CV07-5055 FDB) - 4

LEE · SMART · COOK · MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

2. The plaintiff's action is barred by plaintiff's failure to cooperate with Specialty in its investigation concerning whether the fees, costs and expenses plaintiff has demanded from Specialty in association with the *Brame* case were reasonable.

3. Plaintiff has failed to mitigate its damages.

4. Plaintiff's demand for attorney's fees and costs is not supported by the express terms of the policy.

5. The sole and proximate cause of the plaintiff's alleged injuries were the acts and omissions of persons or entities other than defendant Specialty over whom it had no control and for whom it bears no responsibility.

6. Defendant Specialty has not refused to pay attorney's fees and costs. Specialty has not breached the contract and, thus, a condition precedent to the plaintiff's request for relief based upon breach of contract has not been satisfied.

7. Plaintiff's equitable claims are barred since there exists an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, defendant Specialty Surplus Insurance Company respectfully prays for relief as follows:

1. That plaintiff's Complaint is dismissed with prejudice;

2. That Specialty is awarded its costs and attorney's fees in defense of this action, as allowed by law;

3. That the Court award such other and further relief in favor of Specialty and against plaintiff as it deems just and equitable.

//

//

{1016341.DOC}

DEFENDANT SPECIALTY SURPLUS INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE
DEFENSES
(W. D. Wash. Cause No. CV07-5055 FDB) - 5

LEE · SMART · COOK · MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1 DATED this 13th day of February, 2007.

2 LEE SMART COOK MARTIN &
3 PATTERSON, P.S., INC.

4
5 By: /s/ Joel E. Wright
6 Joel E. Wright, WSBA No. 8625
7 jw@leesmart.com
8 William R. Kiendl, WSBA No. 23169
9 wrk@leesmart.com
10 Of Attorneys for Defendant
11 Specialty Surplus Insurance Company
12
13
14

15 **DECLARATION OF SERVICE**

16 The undersigned declares under penalty of perjury under the laws of the State of
17 Washington that on February 13, 2007, I electronically filed the foregoing pleading with the
18 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
19 following:

20 M. Joseph Sloan Jr.
21 Office of the City Attorney
22 Administration Building
23 3628 South 35th Street
24 P.O. Box 11007
25 Tacoma WA 98411
joseph.sloan@ci.tacoma.wa.us

LEE, SMART, COOK, MARTIN
& PATTERSON, P.S., INC.

By: /s/ William R. Kiendl
William R. Kiendl, WSBA No. 23169
wrk@leesmart.com
Of Attorneys for Defendant
Specialty Surplus Insurance Company

{1016341.DOC}

DEFENDANT SPECIALTY SURPLUS INSURANCE
COMPANY'S ANSWER AND AFFIRMATIVE
DEFENSES
(W. D. Wash. Cause No. CV07-5055 FDB) - 6

LEE · SMART · COOK · MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944